IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 380 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ISHWARLAL RAIJMAL SANDANI

Appearance:

1. Criminal Appeal No. 380 of 1991

MR KC SHAH, APP for Appellant No.

MRS QUEROBINA YAGNIK for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 02/07/2004

ORAL JUDGEMENT

1. This is an appeal filed by the State of Gujarat

under Section 378 of the Code of Criminal Procedure to challenge the judgment and order of acquittal passed by the Ld. Metropolitan Magistrate, Court No. 8 Ahmedabad dated 13th March, 1991 in Criminal Case No. 435 of 1988, which was filed against the respondent under the provisions of section 7 read with section 16 of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act').

2. The case of the prosecution is that the Food Inspector Mr. T.D. Bhatt was on his usual round on 18th January, 1988. On account of one anonymous application he had visited the flour mill of the respondent and expressed his desire to purchase sample of turmeric powder for the purpose analysis. He thereafter, collected 500 gms. of turmeric powder from a polythene bag which was lying in the flour mill. According to the Food Inspector, the spices stores in the flour mill were meant for sale. After collecting the sample, he divided it into three equal parts and filled them in clean and dried bottles and did the sealing and packing in the manner prescribed under rules 14, 15 and 16 of the Prevention of Food Adulteration Rules (hereinafter referred to as 'the Rules'). He thereafter sent one sample to Public Analyst for analysis and two remaining samples to Local Health Authority. On receiving the report, it was found that the sample did not conform to the standards prescribed under the Act and the Rules and, therefore, it was adulterated. The Food Inspector thereafter, forwarded the report as well as other relevant material to the Local Health Authority for obtaining its consent u/S. 20 of the Act. After perusing the material as well as the report of the Public Analyst, the consent was duly accorded in writing by the Local Health Authority.

2.1. On receiving the consent the Food Inspector lodged complaint in he Court of the Ld. Metropolitan Magistrate at Ahmedabad. He also served a notice alongwith copy of the report to the respondent u/S. 13 of the Act and intimated him that if he so desired, he could make an application to the Ld. Magistrate for getting the sample examined by the Director of Central Food Laboratory [hereinafter referred to as 'the DCFL']. In view of the same, the respondent submitted an application for sending the sample to the DCFL. In view of the said application, Ld. Magistrate called for the sample from the Local Health Authority and after complying with all the formalities, despatched it to the DCFL. In due course, the report was received from the DCFL, which also indicated that the sample was

adulterated one.

2.2. At the trial, the respondent pleaded not guilty and claimed to be tried. In support of its case the prosecution led oral evidence and also produced documentary evidence. Oral evidence consisted of the evidence of Food Inspector Tushar D. Bhatt, P.W. 1 Exh. 9 and P.W. 2 Tribhovanbhai Virabhai Makwana. The documentary evidence relied on by the prosecution consisted of report of the Public Analyst, consent granted by the Local Health Authority, the Panchnama, complaint, etc.

2.3. At the end of the trial, the Ld. Magistrate came to the conclusion that the prosecution had not been able to prove the guilt of the respondent and, therefore, he acquitted him of all the charges levelled against him. It is this order of acquittal which is now under challenge before this Court.

3. Mr. K.C. Shah, Ld. APP appearing for the State has submitted that the conclusions drawn by the Ld. Magistrate are not just and proper. He has submitted that when the sample has been examined by the DCFL, his report supersedes the report of the Public Analyst and the Ld. Magistrate could not carry out the comparison between the two to find out discrepancies. He has also submitted that the evidence on record proved that the respondent was manufacturing and selling the offending articles as well as other spices.

3.1. As against that, Ms. Querobina Yagnik, learned advocate appearing for the respondent has supported the judgment and order of the Ld. Magistrate. She has submitted that the prosecution has failed to comply with mandatory provisions of the Act as well as Rules and that would render the case of the prosecution absolutely vulnerable. She has further submitted that so far the identity of the sample is concerned, the evidence is very doubtful and the Ld. Magistrate has rightly upheld the contention of the defence with regard to the same. She has also submitted that there is no conclusive proof on record to show that the respondent either manufactured or sold the turmeric powder or any of the spices mentioned by the prosecution. She has, therefore, submitted that the order of acquittal is just and proper and appeal be dismissed.

4. Having carefully gone through the record with a view to reappreciate the evidence and having carefully considered the rival submissions, it appears that on the

day of the incident the Food Inspector had visited the flour mill of respondent and had collected the sample of turmeric powder from a polythene bag which was lying in the premises of the mill. The evidence of the Food Inspector shows that there was no board or writing of any type either on the containers or on the premises. He, however, has said that on inquiry he was told by the respondent that it was meant for sale. It is an admitted fact that there is no regular shop of the respondent but it is a flour mill for which he had obtained licence from the concerned authority. He has also obtained licence from the Municipal Corporation for carrying out the grinding activity. The version of the Food Inspector that these commodities were meant for sale has been seriously challenged by the defence. The defence has categorically disputed the say of the Food Inspector that the respondent was carrying on trading activity in these commodities from his flour mill. In fact the defence has put a suggestion to the witness i.e. Food Inspector that the respondent is having a flour mill and the residence in one premises only and that the sample was collected from the container which was kept for the domestic use.

4.1. When there was a serious challenge to the say of Food Inspector with regard to selling activity carried on by the respondent, it was the bounden duty of the Food Inspector i.e. the prosecuting agency to produce cogent, reliable and independent evidence to establish that fact. the Food Inspector no-doubt, has stated that the respondent himself had informed him that he was selling these articles. However, that statement does not inspire any confidence. There is no evidence to show that there was any indication regarding the trading activity available on the premises of flour mill. There was neither any sign board nor any board containing price list nor the containers of the commodities gave any indication that the said articles were meant for sale. The Food Inspector himself has not stated as to how he came to know that the respondent was trading in the said spices. Normally a presumption would be drawn to the effect that when there is a flour mill, it would be for doing job work, namely the grinding of food-grains and other similar articles for some one else. In these circumstances, the prosecution was not only required to bring evidence to the effect that the respondent did something more, namely that he was selling the articles including the offending commodity, but it was required to prove this fact beyond any reasonable doubt. That has not been done. Section 7 of the Act takes into its sweep any manufacturing activity for sale or storage of articles or selling or distributing activity of the

adulterated articles. Grinding of the food-grains for someone else would not fall in any of the categories mentioned in this section. Thus, it is difficult to hold that the prosecution had conclusively proved that the respondent had committed any of the acts prohibited under section 7 of the Act constituting offence under section 16 of the Act. In that view of the matter, a benefit has to be given to the respondent. When I am inclined to uphold the order of acquittal on this ground, I do not propose to go into other questions and decide the same.

6. In view of the above, this appeal has not merit and it is dismissed.

[AKSHAY H. MEHTA, J.]

* Pansala.